

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CHAD McCLOSKEY,	§
	§ No. 547, 2010
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 0509027000
	§
Plaintiff Below-	§
Appellee.	§

Submitted: December 23, 2010

Decided: January 14, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

ORDER

This 14th day of January 2011, upon consideration of the appellant's brief filed pursuant to Supreme Court Rule 26(c), his attorney's motion to withdraw, and the State's response thereto, it appears to the Court that:

(1) On February 18, 2009, a Court of Common Pleas jury found McCloskey guilty of the misdemeanors of Receiving Stolen Property, Driving Across a Median, Disregarding a Police Officer's Signal, Failure to Signal, two counts of Operating a Motorcycle Without a Helmet/Glasses, Unsafe Passing on the Left, Improper Lane Change, Driving at an Unsafe Speed and Aggressive Driving. He was sentenced to 19 months at Level V and was ordered to pay fines and restitution. The charges against

McCloskey stemmed from a high speed chase on Route 13 on September 29, 2005 for which he was arrested on December 8, 2006. As a result of the September 29, 2005 incident, McCloskey also was charged with several felonies in the Superior Court. McCloskey filed an appeal of his Court of Common Pleas convictions in the Superior Court. On August 10, 2010, the Superior Court affirmed his convictions. This is McCloskey's direct appeal from the Superior Court's judgment.

(2) McCloskey's counsel on appeal has filed a brief and a motion to withdraw pursuant to Rule 26(c). McCloskey's counsel asserts that, based upon a complete and careful examination of the record and the law, there are no arguably appealable issues. By letter, McCloskey's attorney informed him of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw and the accompanying brief. McCloskey also was informed of his right to supplement his attorney's presentation. McCloskey has not raised any issues for this Court's consideration. The State has responded to the position taken by McCloskey's counsel and has moved to affirm the Superior Court's judgment.

(3) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold: a) this Court must be satisfied that defense counsel

has made a conscientious examination of the record and the law for arguable claims; and b) this Court must conduct its own review of the record and determine whether the appeal is so totally devoid of at least arguably appealable issues that it can be decided without an adversary presentation.¹

(4) In an appeal to this Court from the Superior Court's affirmance of a judgment of the Court of Common Pleas, this Court will affirm the Superior Court's judgment if there is no legal error and the factual findings of the Court of Common Pleas are supported by the record and are the product of an orderly and logical deductive process.² Findings of the Court of Common Pleas that are supported by the record must be accepted by this Court even if this Court, acting independently, would have reached a contrary conclusion.³

(5) This Court has reviewed the record carefully and has concluded that McCloskey's appeal is wholly without merit and devoid of any arguably appealable issue. We also are satisfied that McCloskey's counsel has made a conscientious effort to examine the record and the law and has properly

¹ *Person v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).

² *Hsu v. Great Seneca Financial Corp.*, Del. Supr., No. 454, 2010, Ridgely, J. (Dec. 3, 2010) (citing *Moss v. Prudential-Bache Securities, Inc.*, 581 A.2d 1138, 1140 (Del. 1990)).

³ *Id.* (citing *Levitt v. Bouvier*, 287 A.2d 671, 673 (Del. 1972)).

determined that McCloskey could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/ Carolyn Berger
Justice